

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSIE WILLIAMS,

Plaintiff,

v.

DR. RAIP,

Defendant.

OPINION AND ORDER

13-cv-247-bbc

Pro se plaintiff Jessie Williams brought this lawsuit under 42 U.S.C. § 1983 in which he alleges that defendant Dr. Raip is refusing to prescribe medication for him, even though he is engaging in acts of self harm, talking to himself and unable to sleep. Because plaintiff is a prisoner, I must screen his complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. §§ 1915A.

Under the Eighth Amendment, prisoners have a right to receive adequate medical care, Estelle v. Gamble, 429 U.S. 97 (1976), which includes a right to appropriate mental health treatment. Meriwether v. Faulkner, 821 F.2d 408, 413 (7th Cir. 1987); Wellman v. Faulkner, 715 F.2d 269, 272 (7th Cir. 1983); see also Gates v. Cook, 376 F.3d 323, 332 (5th Cir. 2004) (under Eighth Amendment, “mental health needs are no less serious than physical needs”); but see Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) (stating in dicta that “suicidally depressed are entitled, at most, to precautions that will stop them from

carrying through; they do not have a fundamental right to psychiatric care at public expense”). A prison official may violate this right if the official is “deliberately indifferent” to a “serious medical need.” Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). A “serious medical need” may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. Johnson v. Snyder, 444 F.3d 579, 584-85 (7th Cir. 2006). The condition does not have to be life threatening. Id. A medical need may be serious if it “significantly affects an individual's daily activities,” Gutierrez v. Peters, 111 F.3d 1364, 1373 (7th Cir. 1997), if it causes significant pain, Cooper v. Casey, 97 F.3d 914, 916-17 (7th Cir. 1996), or if it otherwise subjects the prisoner to a substantial risk of serious harm. Farmer v. Brennan, 511 U.S. 825 (1994). “Deliberate indifference” means that the officials are aware that the prisoner needs medical treatment, but are consciously refusing to take reasonable measures to provide treatment. Forbes v. Edgar, 112 F.3d 262, 266 (7th Cir. 1997).

Thus, under this standard, plaintiff's claim has three elements:

- (1) Does plaintiff need medical treatment?
- (2) Does defendant know that plaintiff needs treatment?
- (3) Despite his awareness of the need, is defendant consciously failing to take reasonable measures to provide the necessary treatment?

I conclude that plaintiff has stated a claim upon which relief may be granted under this standard. At this stage, it is reasonable to infer from plaintiff's allegations of his symptoms and defendant's refusal to prescribe medication that defendant was aware that

plaintiff needed medication, but refused to provide it.

At the summary judgment stage or at trial, plaintiff will not be able to rest on his allegations. Rather, he will have to come forward with specific evidence showing that defendant does not have an adequate medical justification for refusing to prescribe the requested medication. It will not be enough for plaintiff to show that he disagrees with defendant's conclusions about the appropriate treatment, Norfleet v. Webster, 439 F.3d 392, 396 (7th Cir. 2006), or even that defendant could be providing better treatment. Lee v. Young, 533 F.3d 505, 511-12 (7th Cir. 2008). Rather, plaintiff will have to show that any medical judgment by defendant was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" his condition. Snipes v. DeTella, 95 F.3d 586, 592 (7th Cir. 1996) (internal quotations omitted).

Plaintiff accompanied his complaint with a motion for appointment of counsel. Because the court has no statutory authority to require a lawyer to represent a particular litigant, Pruitt v. Mote, 503 F.3d 647, 653 (7th Cir. 2007), I am construing his motion as one seeking court assistance in recruiting counsel under 28 U.S.C. § 1915(e)(1). Before a district court can consider such motions, it must first find that the plaintiff has made reasonable efforts to find a lawyer on his own and was unsuccessful or was prevented from making such efforts. Jackson v. County of McLean, 953 F.2d 1070 (7th Cir. 1992). To prove that he has made reasonable efforts to find a lawyer, plaintiff must give the court the names and addresses of at least three lawyers whom he asked to represent him in this case and who turned him down. Because plaintiff has not complied with that requirement, I am

denying his motion without prejudice to his refileing it at a later date after he has made an effort on his own to find representation.

ORDER

IT IS ORDERED that

1. Plaintiff Jessie Williams is GRANTED leave to proceed on his claim that defendant Dr. Raip refused to prescribe medication for plaintiff's mental illness, in violation of the Eighth Amendment.

2. Plaintiff's motion for assistance in recruiting a lawyer, dkt. #4, is DENIED WITHOUT PREJUDICE to plaintiff's filing a renewed motion at a later date.

3. For the time being, plaintiff must send defendant a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendant or to defendant's attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendant. Under the agreement, the Department of

Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendant.

6. Plaintiff is obligated to pay the unpaid balance of his filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund account until the filing fees have been paid in full.

Entered this 18th day of June, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge